

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VINCENT SPRUELL,
Petitioner,

v.

A. KANE,
Respondent.

No. C 05-5183 MMC (PR)

ORDER TO SHOW CAUSE

On December 14, 2005, petitioner, a California prisoner incarcerated at the Correctional Training Facility, Soledad, California, and proceeding pro se, filed the above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the filing fee.

BACKGROUND

In 1984, petitioner was convicted of murder in the second degree in the Superior Court of Merced County. He was sentenced to a term of 15 years to life in state prison. He was denied parole for a sixth time on November 30, 2004 by the California Board of Prison Terms ("BPT"). He has challenged this finding unsuccessfully in habeas petitions filed at all three levels of the California courts.

DISCUSSION

A. Standard of Review

This Court may entertain a petition for a writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975). A district court shall "award the writ or issue an

1 order directing the respondent to show cause why the writ should not be granted, unless it
2 appears from the application that the applicant or person detained is not entitled thereto."
3 28 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations in the
4 petition are vague or conclusory, palpably incredible, or patently frivolous or false. See
5 Hendricks v. Vasquez, 908 F.2d 490, 491 (9th Cir. 1990) (quoting Blackledge v. Allison,
6 431 U.S. 63, 75-76 (1977)).

7 B. Legal Claims

8 Petitioner claims that the BPT's finding of unsuitability for parole is not supported by
9 sufficient evidence, and thus violates his right to due process. Liberally construed, petitioner
10 states a cognizable claim that he has a federally protected liberty interest in being released on
11 parole, and that the BPT's finding him unsuitable for parole violated that interest because the
12 finding was not supported by at least some evidence.

13 **CONCLUSION**

14 In light of the foregoing, the Court orders as follows:

15 1. The Clerk of the Court shall serve by certified mail a copy of this order and the
16 petition, along with all attachments thereto, upon respondent and respondent's attorney, the
17 Attorney General for the State of California. The Clerk shall also serve a copy of this order
18 on petitioner.

19 2. Respondent shall file with the Court and serve on petitioner, within 60 days of
20 the date this order is filed, an answer conforming in all respects to Rule 5 of the Rules
21 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be
22 granted based on petitioner's cognizable claim. Respondent shall file with the answer and
23 serve on petitioner a copy of all portions of the state trial record that have been transcribed
24 previously and that are relevant to a determination of the issues presented by the petition.

25 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with
26 the Court and serving it on respondent within 30 days of the date the answer is filed.

27 3. In lieu of an answer, respondent may file, within 60 days of the date this order
28 is filed, a motion to dismiss on procedural grounds, as set forth in the Advisory Committee

1 Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a
2 motion, petitioner shall file with the Court and serve on respondent an opposition or
3 statement of non-opposition within 30 days of the date the motion is filed, and respondent
4 shall file with the Court and serve on petitioner a reply within 15 days of the date any
5 opposition is filed.


6 4. Petitioner is reminded that all communications with the Court must be served
7 on respondent by mailing a true copy of the document to respondent's counsel.

8 5. It is petitioner's responsibility to prosecute this case. Petitioner must keep the
9 Court and respondent informed of any change of address and must comply with the Court's
10 orders in a timely fashion. Failure to do so may result in the dismissal of this action for
11 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

12 6. Upon a showing of good cause, requests for a reasonable extension of time will
13 be granted as long as they are filed on or before the deadline which they seek to extend.

14 IT IS SO ORDERED.

15 DATED: May 25, 2006

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17 MAXINE M. CHESNEY
18 United States District Judge
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